

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KARA COOPER,

Plaintiff,

V.

GEICO ADVANTAGE INSURANCE
COMPANY,

Defendant.

C22-0937 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The motion for summary judgment, docket no. 11, filed by defendant GEICO Advantage Insurance Company (“GEICO”) is DENIED. Under Washington law, an insured who “substantially and materially” breaches a cooperation clause [in an insurance contract] is contractually barred from bringing suit under the policy if the insurer can show it has been actually prejudiced.” *Staples v. Allstate Ins. Co.*, 176 Wn.2d 404, 410, 295 P.3d 201 (2013). To prevail on the affirmative defense of noncooperation, GEICO must show that (i) “[Plaintiff] failed to ‘substantially comply’ with the terms of the cooperation clause [in her insurance policy],” (ii) “the information at issue was material to the circumstances giving rise to [its] liability, and (iii) “[it] suffered actual prejudice as a result.” *See Wilson v. GEICO Indem. Co.*, No. C18-226, 2018 WL 3869436, at *3 (W.D. Wash. Aug. 15, 2018). GEICO argues that Plaintiff substantially and materially breached the cooperation clause in her policy by refusing to attend an independent medical examination (“IME”). Plaintiff’s insurance policy provides that “[t]he injured person shall submit to examination by doctors of [GEICO’s] choice. Such examinations will be at [GEICO’s] expense and as often as [GEICO] may reasonably ask.” Ex. A to Gage Decl. (docket no. 12-1 at 16). Although GEICO argues that Plaintiff

1 has “refused” to attend an IME, the record shows that Plaintiff agreed to attend an
2 examination on April 28, 2022. Birkenbuel Decl. at ¶ 7 (docket no. 16-8). On April 22,
3 2022, Advanced Medical Group (“AMG”), the organization GEICO retained to perform
4 the examination, notified Plaintiff’s Counsel that its doctor was no longer available for an
5 examination on the agreed upon date. *Id.* at ¶ 8. In response, Plaintiff’s Counsel asked if
6 AMG could find another provider to perform the examination on April 28, 2022. *Id.*
7 Plaintiff’s Counsel did not receive any further response from AMG regarding the
8 rescheduling of Plaintiff’s examination. *See id.* GEICO also contends that Plaintiff
9 breached the cooperation clause of her insurance policy by failing to provide to GEICO
her medical records for the five years prior to the automobile accident. *See* Ex. I to Gage
Decl. (docket no. 12-1 at 91–92). Plaintiff’s policy, however, does not explicitly require
Plaintiff to provide her prior medical records, *see* Ex. A to Gage Decl. (docket no. 12-1 at
16), and GEICO does not dispute that Plaintiff provided over 600 pages of medical
records in support of her underinsured motorist claim. *See* Barker Decl. at ¶ 4 (docket
no. 16-7). Thus, the Court concludes that a genuine dispute of material fact exists as to
whether Plaintiff substantially complied with the terms of her insurance policy.¹ *See* Fed.
R. Civ. P. 56(a).

10 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

11 Dated this 2nd day of November, 2022.

12 Ravi Subramanian
13 Clerk

14 s/Laurie Cuaresma
15 Deputy Clerk

21
22 ¹ Because the Court finds a genuine factual dispute regarding Plaintiff’s compliance, it does not
address the issues of materiality and prejudice.